IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Udai Singh @ Rajendra Singh @ Raju Bana & Another
Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.601/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 20-2-2003 in Sessions Case No.135/2001 passed by Shri Ashok Kumar Saxena, RHJS, Additional Sessions Judge (Fast Track) No.2, Kota.

Date of Judgment: October 09, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. A.K.Gupta] for the appellants.
Mr. Rinesh Gupta]
Mr. Brijesh Mudgal]
Mr. Virendra Singh]

Mr. R.P.Kuldeep, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Udai Singh @ Rajendra Singh @ Raju Bana and Ummed Singh, the appellants herein, were put to trial before learned Additional Sessions Judge (Fast Track) No.2 Kota, who vide judgment dated February 20, 2003 convicted and sentenced them under section 302 IPC to suffer imprisonment for life and fine Rs.3000/-, in default to further suffer three months imprisonment.

2. It is the prosecution case that on January 10, 2001 around 9 PM while Mohan Lal (now deceased) proceeded with Babu Lal Gurjar to his

house, Shambhu Singh opened fire at Mohan Lal and appellants Udai Singh and Ummed Singh inflicted injuries with lathi and Kuntia on the person of Mohan Lal, who died on the way while taken to the Hospital. Satya Narayan (Pw.1) submitted written report (Ex.P-1) at police station Bapawar Kalan where case under section 302/34 IPC was registered and investigation commenced. Since Shambhu Singh died during investigation, charge sheet was filed only against the appellants. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Kota. Charge under section 302 in the alternative 302/34 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 30 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Five witnesses in defence were examined. On hearing final submissions learned trial Judge convicted and sentenced the appellants as indicated herein above.

3. We have heard the rival submissions and scanned the material on record.

4. Death of Mohan Lal was undeniably homicidal in nature. As per autopsy report (Ex.P-13) following ante mortem injuries were found on the dead body:-

1. Incised wound 7 x 1cm x bone deep on vertex of scalp.
2. Incised wound 8 x 2cm x muscle deep on back of neck Lt. side.
3. Stitched wound 8cm long on Lt. temporal region of scalp.
4. Abrasion (3 in No.) 2 x 1cm to 2 x 2cm Rt.cheek & zygomatic region.
5. Abrasion 4 x ¼cm Rt. forearm on 1/3 portion.
6. Abrasion 1 x 1cm Rt. knee cap.
7. Abrasion ¼ x ¼cm Rt. leg L.1/3 antly.

8. Abrasion 3 x 3cm back of chest scapular region (Lt.)
9. Contusions (3in No.) 4 x 2cm to 2 x 2cm on back of chest Lt. side.
Post mortem injuries:
1. Cut 17 long transverse on center of forehead.
2. Post mortem removal of skin 15 x 8cm on center of fronto parietal region skin flap lying separately

The cause of death was shock as a result of ante mortem injury to spleen with cumulative effect of head injury.

5. Babu Lal (Pw.3) in his deposition stated that on his pursuation deceased accompanied him upto his house to make appellant Udai Singh understand. He deposed thus:-

> "मैं नवल किशोर को जानता हूं। छठे महिने की 10 तारीख की बात है मैं उसके यहां गया था। वहां नवल किशोर, धर्मसिंह, हरि राम और उदय सिंह थे व शराब पी रहे थे। मुझे कहा कि मादरचोद यहां क्या लेने आया है। गाली उदय सिंह ने दी थी और मेरे थप्पड मार दी। दो चार थप्पड मारते ही मैं मोहन के घर पर भाग कर गया। वहां मोहन और मदन थे मैंने उनको बताया कि मेरे इन्होने दे पाडी है। ये मुझे घर तक छोडने और उनको समझाने आये।"

6. Informant Satya Narain (Pw.1) alleged that fire opened by Shambhu Singh hit on the forehead of his father, whereas as per post mortem report no gun shot injury was found on the forehead of the deceased. Satya Narain as per his own statement reached to the spot after the incident occurred. He stated thus:-

> "मैं जब पहुंचा तो मैंने देखा कि मेरे पिताजी के साथ भी झगडा हो गया है और उनके भी चोटें आई हैं।"

7. Dr.Ashok Mundra (Pw.7), who conducted autopsy on the dead body, deposed that main cause of death was injury to the spleen. In his cross examination he stated that:-

"चोट नं.8 व 9 के कारण इस व्यक्ति की बांयी तरफ की सातवीं से दसवीं पसली का फ्रेक्चर हो गया था एवं तिल्ली भी फट गई थी इसलिए इनसे इस व्यक्ति की मृत्यु होना संभव है।"

Injuries No.8 and 9 were abrasion and contusions on the back of chest of scapular region (left side) and because of those injuries ribs got fractured and torn spleen.

8. Salient features of the case are as under:-

(i) Deceased himself had gone to the place of incident to persuade appellant Udai Singh not to quarrel with Babu Lal (Pw.3).

(ii) Accused Shambhu Singh who opened fire at the deceased died in the course of investigation.

(iii) Informant Satya Narain (Pw.1) admitted that when he reached to the spot he saw that his father had sustained injuries.

(iv) Cause of death of the deceased was injury to spleen.

(v) Injuries attributed to appellants were on the left side of back of chest and because of these injuries ribs got fractured and torn spleen.

9. In view of fact situation of the case, it is difficult to hold that the appellants intended to cause that particular injury to spleen. However, under the circumstances the appellants must be attributed to have knowledge that by dealing such blows they were likely to cause the death of deceased in which case the offence is one punishable under section 304 Part II and not under section 302 IPC. Learned trial Judge did not properly appreciate the

nature of injuries sustained by the deceased and committed error in convicting and sentencing the appellants under section 302 IPC.

10. For these reasons, we dispose of the instant appeal in the following terms:-

(i) We partly allow the appeal and instead of section 302 IPC, we convict the appellants Udai Singh @ Rajendra Singh @ Raju Bana and Ummed Singh under section 304 Part II IPC. Looking to the fact that the appellants have already remained in continuous custody for a period of more than five years, we sentence them to the period for which they have already remained in confinement. The appellants Udai Singh @ Rajendra Singh @ Raju Bana and Ummed Singh, who are in jail, shall be set at liberty forthwith, if not required to be detained, in any other case.

(ii) The impugned judgment of learned trial court stands modified as indicated above.

(Chatra Ram Jat),J. (Shiv Kumar Sharma)J.

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